

**Board of Chiropractic Examiners
TELECONFERENCE MEETING MINUTES
Enforcement Committee
May 31, 2018**

Teleconference Meeting Locations

<p><u>Board of Chiropractic Examiners</u> 901 P Street, Ste 142A Sacramento, CA 95814 (916) 263-5355 (Board Staff)</p>	<p><u>Sergio Azzolino, D.C.</u> Azzolino Chiropractic Neurology & Integrative Wellness 1545 Broadway St. Suite.1A San Francisco, CA 94109 (415) 563-3800</p>	<p><u>Dionne McClain, D.C.</u> McClain Sports & Wellness, Inc. 6360 Wilshire Blvd., Ste 410 Los Angeles, CA 90048 (323) 653-1014</p>
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Committee Members Present

Sergio Azzolino, D.C., Chair
Dionne McClain, D.C.

Staff Present

Robert Puleo, Executive Officer
Marcus McCarther, Assistant Executive Officer
Beckie Rust, Compliance Manager
Kenneth Swenson, Attorney III

Call to Order

Dr. Azzolino called the meeting to order at 12:02 p.m.

Roll Call

Dr. McClain called the roll. All Committee Members were present at the locations listed on the agenda.

Review and Discussion regarding Enforcement Committee Action Items from the 2017- 2019 BCE Strategic Plan

Mr. McCarther briefed the committee on the status of action item 2.1.4, Publish *Expert Witness Guidelines in the "Licensees" and "Publications" tabs of the Board website*. He explained that the Committee has recently identified the Expert Witness program as an area of concern and recommendations will be addressed during this meeting.

Mr. McCarther stated that action item 2.4.1, *Create an outreach document that provides information on potential violations resulting from social media activity*, has been completed. The outreach document was included in the Board's Winter/Spring 2018 newsletter.

Dr. McClain referred to action item 2.1.3., *Create outreach publications and materials educating the public on the complaint process*, and inquired about the "on hold" status.

Mr. McCarther stated that the Committee has determined that outreach materials such as complaint brochures are not effective methods of disseminating information about the Board's complaint process

to the public due to limited resources. He added that the Board's website provides relevant information related to the complaint process.

Dr. McClain referred to the Committee's discussion at the February 8, 2018 Committee meeting and inquired if the Committee had the opportunity to disseminate information about the complaint process to recent graduates of chiropractic at school events or ask CE providers to share information with licensees attending courses for CE credit.

Dr. Azzolino reiterated that this action item will not serve the Board's purpose in disseminating the information efficiently. He added that the Committee's focus is to take proactive steps to mitigate and minimize complaints received by the Board. He stated that the information related to the complaint process on the Board's website is sufficient.

Dr. McClain inquired whether the public has the ability to easily find information on the complaint process whenever it is needed. She added that it is important to inform the public of the complaint process and ensure that resources are available to make this information visible.

Dr. Azzolino suggested using resources within chiropractic schools and the California Chiropractic Association (CCA) to educate the public, stakeholders and students about the complaint process.

Dr. Azzolino inquired about other boards within the Department of Consumer Affairs (DCA) and the steps they have taken to mitigate these occurrences.

Mr. Puleo responded that the Governor's office placed restrictions on promotional materials a few years ago. Therefore, DCA boards do not have the resources to conduct extensive outreach to consumers.

Mr. Puleo shared that the public can easily find information about the Board's complaint process by searching for the word "chiropractor" in search engines such as google. He added the Board's link is at the top of search page because of our affiliation with DCA, which has a large web presence.

Mr. Puleo stated the Board provides a consumer link on its home page with information on how to file a complaint. He explained that, due to constraints placed on DCA boards regarding promotional materials, most boards use their website to inform the public about their complaint process. The Board is following the same steps.

Mr. McCarther suggested that further research can be done on this topic if the Committee deems it necessary.

Mr. Puleo recommended contacting the American Chiropractic Association (ACA) and CCA and inquire about the possibility of including a link to the Board's website on their webpage. He added that this could help direct individuals who inadvertently access ACA's or CCA's webpage.

Review, Discussion and Possible Action regarding the Expert Witness program

Mr. McCarther stated that staff has researched and gathered information related to other DCA expert consultant programs. He added that this information may be useful as the Committee considers alternatives to the Board's existing expert review program. He announced that staff is presenting recommendations for consideration during this meeting.

Mr. McCarther discussed the research findings and resulting policy questions. He recommended a minimum monthly practice hour requirement defined as 80 hours a month in direct patient care, clinical activity or teaching, and at least 40 hours in direct patient care.

Dr. Azzolino and Dr. McClain agreed with the recommendation.

Mr. McCarther noted it would be appropriate to require a minimum year requirement of licensed professional experience given that it is a common requirement for other DCA healing arts boards. He inquired if a ten-year minimum requirement is suitable.

Dr. McClain stated that, although a ten-year minimum requirement is suitable, requiring more years of licensed professional experience does not necessarily mean that expert consultants are abreast of the current and evolving practice of the chiropractic profession.

Dr. Azzolino agreed that the ten-year minimum requirement is appropriate as it allows licensees to obtain the necessary level of skill and knowledge to render services as a subject matter expert (SME).

Mr. McCarther suggested it would be beneficial to implement criteria for disqualification of applicants. He added that said criteria would allow staff to easily identify applicants who do not meet the minimum qualifications to serve as SMEs for the Board.

Dr. McClain inquired if it is possible to have existing expert consultants comply with new SME recruitment requirements.

Dr. Azzolino stated that the Board may choose to disqualify an existing expert by discontinuing consultation services.

Dr. McClain asked if the Board notifies expert consultants of its decision for disqualification.

Mr. Puleo responded that the Board does not provide a formal disqualification letter to experts.

Dr. Azzolino stated that he is not opposed the idea of being forthcoming.

Mr. Puleo stated that he is not aware of any legal requirements against being forthcoming; however, it is likely that the experts in question will be offended should they be informed of the Board's decision to no longer accept their work based on unsatisfactory performance. He expressed concern over issues that could arise given that said experts may challenge the Board's decision.

Mr. Puleo asked for legal counsel advice.

Mr. Swenson stated that if said experts are informed that they will no longer be appointed to cases from the Board, it could implicate their professional reputation, which then, gives them a right to due process based on liberty interest (hearing request). He added that the Board does not need to renew a contract with an expert as it is purely discretionary. During the remainder of the contract period for the Board, the best approach would be to simply not appoint said experts for a particular matter.

Mr. McCarther discussed the disqualification criteria staff could possibly use during the initial screening of applications. He provided examples, such as the failure to complete the application, failure to meet the ten-year minimum requirement of licensed professional experience or any disciplinary actions taken against a Qualified Medical Evaluator (QME).

Mr. McCarther inquired if an active employment relationship with an insurance company would be consideration for disqualification.

Dr. Azzolino stated that there is a conflict of interest because the case may come before the Board and the insurance company. It is not in the Board's interest to employ an expert consultant who may be biased.

Dr. McClain inquired if QMEs are likely to face the same issue.

Dr. Azzolino clarified that, unlike working for an insurance company, QMEs are appointed by the Department of Industrial Relations, Division of Workers Compensation. This entity should be completely unbiased. He added that the Committee's intent is to seek candidates who will not act as advocates for the Board or the respondent chiropractor. The Board's mission is to enhance consumer protection.

Dr. McClain agreed that there could be a predisposition to deny in favor of the insurance company.

Mr. McCarther inquired if the Committee would like to consider asking applicants about disciplinary action against their QME appointment.

Dr. Azzolino and Dr. McClain agreed with the recommendation.

Dr. Azzolino questioned the necessity of considering "an incomplete application" as screening criteria during the initial screening of applications. He stated that this requirement appears to be redundant.

Mr. Puleo stated that including this requirement will help simplify the initial screening so that the second-level review of applications is streamlined.

Mr. Puleo inquired whether the screening criteria will be released to the public.

Mr. Swenson recommended that the internal administrative screening criteria should not be made available to the public. The criteria discussed will determine the suitability of potential experts on a case-by-case basis.

Mr. Puleo suggested that disciplinary action taken against any professional license in California or any other state should constitute grounds for disqualification.

Dr. Azzolino agreed with Mr. Puleo's recommendation.

Mr. Swenson recommended adding disciplinary actions taken by a specialty board to the screening criteria. He emphasized the importance to consider entities other than licensing agencies.

Mr. McCarther stated that any disciplinary issue may constitute grounds for disqualification.

Mr. Swenson suggested considering disciplinary actions against academic appointments.

Mr. Puleo shared that chiropractic schools do not report that information to the Board. Therefore, applicants would have to self-disclose that information on the application.

Dr. Azzolino and Dr. McClain agreed with Mr. Swenson's recommendation.

Mr. McCarther asked if the Committee would like to provide licensees with Continuing Education (CE) credit for participation in the expert consultant training. He proposed that CE credit is given to licensees upon approval to serve as SMEs for the Board.

Dr. McClain stated that the Continuing Education Committee is working on revising CE guidelines and respective categories. She explained that the CE Committee will select the appropriate category for CE credits (possibly under special projects). Additionally, the CE Committee will determine the appropriate number of CE hours that newly appointed expert consultants should obtain.

Dr. McClain agreed with Mr. McCarther's recommendation; however, the CE Committee will have to revise CE guidelines prior to releasing that information to applicants.

Mr. Puleo added that providing CE credit to SMEs would compensate for their time gathering and submitting required documents for the recruitment process.

Mr. McCarther stated that the Enforcement Committee will follow up with the CE Committee to request a status update.

Mr. McCarther proposed making revisions to the current SME application form. He referred to section 1, *Current Employment Information*, and suggested including a question regarding the length of time in the current position.

Dr. McClain suggested including an additional question asking applicants if their current position has been held for less than 3 years. If so, they would be required to provide previous employment information.

Mr. McCarther explained that applicants are required to submit their curriculum vitae with the application, and it may not be necessary to request that information under section 1.

Dr. McClain requested clarification regarding the 10-year minimum requirement of professional licensure. She explained that being licensed for 10 years does not necessarily mean that licensees have had an active practice for 10 years.

Mr. McCarther stated the staff will work on the language to address Dr. McClain's concern.

Mr. Puleo referred to the *Practice Setting* portion of section 1 and inquired whether additional clarification is needed. Mr. Puleo asked the Committee to provide some examples of practice settings such V.A. hospitals or multi-disciplinary practices.

Dr. Azzolino suggested specifying different types of practices as it may provide some guidance to applicants. Some examples of practice settings are private and group practices.

Mr. McCarther referred to section 2, *Professional Qualifications* of the application and suggested adding a question requesting information about any disciplinary action(s) against an applicant's QME appointment.

Dr. McClain suggested adding in other disciplinary questions under this section.

Mr. McCarther stated that this question could be added to section 7, *Disciplinary Information*.

Dr. Azzolino suggested asking applicants to disclose additional information related to a prior QME appointment. He explained that he is interested in understanding whether applicants chose not to be reappointed or their appeal for reappointment was denied.

Dr. McClain stated that the question related to disciplinary action taken against QME should suffice. She added that if any action was taken against a QME appointment, then the Board would require an explanation in order to make an informed decision.

Dr. McClain requested clarification regarding a question related to the percentage of time applicants actively treat patients. She asked if the percentage of time is indicative of the 80-hour monthly

requirement in active practice. Additionally, Dr. McClain suggested asking about the number of hours per month instead.

Mr. McCarther stated that, although the 1 page-recruitment includes the 80-hour monthly requirement along with the 40 hours of direct patient care, this question may be redundant

Mr. Puleo recommended maintaining the question because it will allow staff to verify if applicants meet the minimum requirements.

Dr. McClain agreed to not modify the question and leave it as is.

Mr. McCarther referred to section 3, *Court Expert Witness Experience*, and inquired if the Committee proposed any changes to this section.

Mr. McCarther questioned the necessity for the Board to ask applicants whether they have knowledge in testifying as an expert witness. He noted that, in this case, asking for knowledge and experience may be redundant.

Dr. McClain and Dr. Azzolino agreed with the suggestion.

Mr. Puleo stated that it is unnecessary to ask applicants if they have knowledge as their experience should suffice under section 3.

Ms. Rust noted that this section includes two questions that are very similar. The first question reads "Have you testified in court as expert witness as a Doctor of Chiropractic?", whereas the second question reads "do you have knowledge and experience with presenting testimony in court, arbitrations or depositions as an expert in medical and legal proceedings?". She inquired if it is necessary to include both questions.

Dr. Azzolino stated that there is a difference as some cases may require the legal opinion of the treating provider as opposed to the legal opinion of an expert, who reviews facts independently and impartially.

Mr. Puleo recognized that there is a difference. He stated that both questions include the terms *expert witness as a Doctor of Chiropractic* and *expert in medical and legal proceedings*, which seems to spur confusion.

Dr. Azzolino suggested creating a separate category for the second question.

Mr. Swenson recommended modifying the first question to reflect the following: "Have you testified in court as a retained expert Witness?". He explained that non-retained expert witnesses in court proceedings provide testimony as treating providers.

Dr. Azzolino suggested distinguishing the difference between a retained expert, who reviews facts independently and impartially, and a treating provider, who has experience presenting a testimony in court, arbitrations, or depositions in medical or legal proceedings.

Mr. Swenson agreed with Dr. Azzolino's recommendation. He stated that presenting testimony in court or depositions may not require the same level of adherence to strict standards as being retained to testify as an expert witness.

Mr. McCarther referred to section 4 of the application, *Knowledge and Experience*, which refers to questions identifying the knowledge and experience of applicants on various topics.

Dr. Azzolino asked Mr. Swenson if the Committee should redefine this section by removing the term knowledge and strictly focus on experience.

Mr. Swenson stated that there is a distinction between the term knowledge and experience. For example, there is the ability to interpret laws and experience interpreting the laws and regulations in actual cases. He recommended maintaining the term knowledge in this section.

Dr. McClain asked if the Committee should have two separate questions for each category under section 4. For example, one question would apply to knowledge and another one to experience in order to distinguish the level of skill applicants may have.

Mr. Swenson noted that it depends on what the Committee deems appropriate. He explained that if the Committee is mainly seeking experience and the skill to apply laws and regulations, it would be best to include two separate questions under the same category.

Mr. McCarther emphasized that this application allows applicants to self-identify their knowledge and experience. He added that, ultimately, the Committee will make the determination on the applicant's ability to sufficiently render the services to the Board.

Mr. McCarther referred to section 6 of the application, *Publications*. He inquired whether the Committee would like to consider peer reviewed publications as opposed to other publications.

Dr. Azzolino and Dr. McClain agreed with the recommendation.

Mr. McCarther referred to section 7 of the application, *Disciplinary Information*. He recommended adding the question about disciplinary action against an applicant's academic appointment under section 5, *Academic Appointments*, and maintain section 7 as is.

Mr. McCarther referred to section 8 of the application, *Personal Summary/Writing Sample*, and inquired whether the Committee has a preference between a Statement of Qualifications or a personal summary explaining why applicants are interested in serving as SME for the Board.

Dr. Azzolino and Dr. McClain shared they would like to review both, the personal summary and the Statement of Qualifications, as it is important to understand the reason why an applicant is interested in becoming an expert.

Mr. McCarther also stated that staff will provide a redacted case to the Committee for review. Requiring applicants to prepare a short-written report and provide their opinion based on case facts is an effective way to ensure consistency among expert consultant reports.

Dr. Azzolino and Dr. McClain agreed with the recommendation.

Mr. McCarther referred to section 9, *References*, and inquired whether it is necessary to maintain this section on the application.

Dr. Azzolino recommended limiting section 9 to professional references only.

Mr. Puleo suggested requesting medical or legal professional references. He noted that it would be beneficial to limit professional references those two fields.

Mr. Puleo also proposed that, if the Committee has additional questions regarding an application, it should direct staff to call references and ask specific questions whenever it is necessary.

Dr. Azzolino agreed with Mr. Puleo's recommendation.

Mr. McCarther asked if this newly created SME recruitment process, whereby the Committee reviews applications and other materials, is of interest to the Committee.

Dr. Azzolino and Dr. McClain agreed with the proposed recommendations.

Mr. McCarther inquired if the Committee would be interested in conducting interviews of applicants to determine if they are suitable candidates for the position. He proposed conducting interviews in northern and southern California on a rolling basis. All the logistics will be finalized with the Committee.

Dr. Azzolino and McClain agreed.

Dr. McClain inquired whether there is any type of reevaluation of existing SMEs. She stated that it is important to ensure they undergo training and are abreast of the current and evolving practice of the chiropractic profession.

Mr. Puleo stated that the Board sends out correspondence to existing SMES and reminds them of the option to re-apply once their contract has expired. He explained that if they do not re-apply, they are automatically out of the pool. If they are reappointed, then they would be required to undergo training once again.

Dr. McClain inquired if the Board has taken steps to recruit board certified specialists for the expert consultant program.

Mr. McCarther stated that the new application will request applicants to identify any areas of specialty. Additionally, staff will contact entities that certify diplomates and ask their members to apply to the Board's SME program.

Dr. Azzolino suggested asking CCA to inform their members of the Board's interest in recruiting new experts and diplomates.

Mr. Puleo stated that, typically, the Board informs CCA when recruiting expert consultants. CCA has been extremely helpful by disseminating information related to the Board's expert recruitment process. He added that the Board will continue to work with CCA.

Dr. McClain inquired if the Committee should also reach out to ACA for applicants moving to California.

Dr. Azzolino stated he can get a list of potential experts from ACA.

**MOTION: DR. AZZOLINO MOVED TO APPROVE THE PROPOSED EXPERT CONSULTANT PROGRAM WITH RECOMMENDATIONS AS PER DISCUSSION.
SECOND: DR. MCCLAIN SECONDED THE MOTION.**

DISCUSSION:

Mr. Swenson stated that a Board vote is required to revise the recruitment process for experts. He explained that the power of a two-member committee is limited.

MOTION NOT CARRIED

Dr. McClain inquired if it is possible for Board members to attend the expert training.

Mr. Puleo stated that if there are more than two Board members at a training, it would have to be noticed as a public meeting. Mr. Puleo explained that the Bagley-Keen Open Meeting Act mandates that no more than two Board members actively discuss Board business.

Mr. Puleo suggested that the Committee could implement a rotation system so that Board members, who are interested in attending or participating, are given an opportunity do to so at any given training.

Dr. McClain stated it would be beneficial to the licensed members of the Board to be informed of these topics, in the event they are assigned to the Enforcement Committee.

Public Comment for Items not on the Agenda

N/A

Future Agenda Items

N/A

Adjournment

Mr. Puleo adjourned the meeting at 1:30 p.m.